

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
10

11 PHILLIP D. BURDICK,) No. CV 08-03709-VBF (VBK)
12)
13 Petitioner,) ORDER (1) ACCEPTING AND ADOPTING
14) THE REPORT AND RECOMMENDATION OF
15 v.) THE UNITED STATES MAGISTRATE
16) JUDGE, AND (2) DISMISSING THE
17 JOHN MARSHALL, et al.,) PETITION FOR WRIT OF HABEAS
18) CORPUS
19 Respondents.)
20 _____)
21

22 Pursuant to 28 U.S.C. §636, the Court has made a de novo review
23 of the Petition for Writ of Habeas Corpus ("Petition"), Respondent's
24 Answer, Petitioner's Reply, all of the records herein and the Report
25 and Recommendation of the United States Magistrate Judge ("Report").
26

27 //

28 //

//

//

//

//

//

//

1 **IT IS ORDERED** that: (1) the Court accepts and adopts the Report
 2 and Recommendation, (2) the Court declines to issue a Certificate of
 3 Appealability ("COA");¹ and (3) Judgment be entered denying and
 4 dismissing the Petition with prejudice.

5 

6 DATED: 7-16-10

HON. VALERIE BAKER FAIRBANK
 UNITED STATES DISTRICT JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
 21 ¹ Under 28 U.S.C. §2253(c)(2), a COA may issue "only if the
 22 applicant has made a substantial showing of the denial of a
 23 constitutional right." The Supreme Court has held that, to obtain a
 24 Certificate of Appealability under §2253(c), a habeas petitioner must
 25 show that "reasonable jurists could debate whether (or, for that
 26 matter, agree that) the petition should have been resolved in a
 27 different manner or that the issues presented were 'adequate to
 28 deserve encouragement to proceed further'." Slack v. McDaniel, 529
 U.S. 473, 483-84, 120 S.Ct. 1595 (2000)(internal quotation marks
 omitted); see also Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct.
 1029 (2003). After review of Petitioner's contentions herein, this
 Court concludes that Petitioner has not made a substantial showing of
 the denial of a constitutional right, as is required to support the
 issuance of a COA.